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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DANIEL C. RICHMOND,

Petitioner,

vs.

NEVADA ATTORNEY GENERAL, *et al.*,

Respondents.

3:12-cv-00348-HDM-WGC

ORDER

This closed habeas matter under 28 U.S.C. § 2254 comes before the Court on petitioner's motion (#14) for entry of order granting relief. The motion was mailed for filing on October 3, 2012, the same day that final judgment was entered dismissing the action without prejudice. The motion therefore would appear to be a motion seeking pre-judgment relief rather than post-judgment relief.

The motion will be denied. As with an earlier motion that also was denied, petitioner in essence maintains that he is entitled to a default judgment because the respondents have not filed a response. The motion is frivolous. Under well-established law, there can be no judgment by default in a habeas matter. *See, e.g., Gordon v. Duran*, 895 F.2d 610, 612 (9th Cir. 1990). Petitioner is subject to a presumptively valid judgment of conviction unless and until overturned by a decision on the merits. Under Rule 5(a) of the Rules Governing Section 2254 Cases, respondents, even if otherwise validly served, are under no obligation to respond to a habeas petition until expressly ordered to do so by the district court following initial review

1 of the petition under Rule 4. The provisions of 28 U.S.C. § 2243 do not require that the Court
2 proceed differently than it did in this case. The motion is without merit.

3 IT THEREFORE IS ORDERED that petitioner's motion (#14) for entry of order granting
4 relief, treated as a pre-judgment motion, is DENIED.

5 DATED: October 22, 2012.

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HOWARD D. MCKIBBEN
United States District Judge